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SUBJECT: DOMINICAN REPUBLIC EMBRACES IACHR: PLACES JUDGE
AND ACCEPTS JUDGEMENT

¶1. (U) Long-time Foreign Ministry professional Dr. Radhys Abreu de Polanco was elected from among 6 candidates during the recent OAS General Assembly (June 4-6) to serve a term as judge on the Inter-American Court of Human Rights (IACHR). She is one of six judges; each has a term of six years with the possibility of one re-election. Not coincidentally, during the first day's private session of heads of delegation, Dominican Foreign Minister Carlos Morales Troncoso reaffirmed that the Dominican government would satisfy the September 2005 IACHR judgment it lost in the case of Yean and Bosico v. Dominican Republic (Case 130, Inter-Am. C.H.R. (Sept. 8, 2005)). In that case, the government's refusal to award birth certificates was found to have violated the subjects' rights under international law.

¶2. (SBU) This reaffirmation shows that the Fernandez administration responds positively to discrete legal decisions and reacts rationally when subjected to international pressure. It should not be read as a signal of a change in migration policy or as a rethinking of the treatment of the Dominican Republic's community of undocumented Haitian migrants, numbering up to one million persons in a country officially populated by nine million.

THE CASE

¶3. (U) In Yean and Bosico, attorneys assisted by the University of California Berkeley Human Rights Center had spent several years petitioning the Dominican government and subsequently the Inter-American Human Rights Commission on behalf of two minors of Haitian ancestry, born in the Dominican Republic of Dominican mothers, who were denied the benefit of "late birth registration." Applicants were denied birth certificates when their parents proved unable to verify Dominican citizenship under a stringent 11-point proof of nationality test governing the late registration of births in the Dominican Republic. In 2000, when the Commission was unable to mediate a satisfactory outcome, it referred the case to the IACHR. The Dominican government summarily issued the birth certificates in 2001 and declared the case concluded, but the plaintiffs continued the action in search of compensation.

¶4. (U) Following a trial marked by the submission of numerous amicus curiae briefs, in September, 2005 the IACHR found that the initial denial of the birth certificates had violated the girls' rights to nationality, equality before the law, a juridical personality, a name, and special protection as enshrined by international law and agreement, as well as the girls' families' right to personal integrity.

¶5. (U) While the Court also held that the "in transit" exception to jus soli citizenship as provided by the Dominican Constitution could not be read so broadly as to

exclude all undocumented migrants, this holding was not on point; the girls, mothers, while undocumented, were clearly not migrants. That is to say, the broader issue of Dominican citizenship for the children of Haitian migrants was not before the Court.

THE INITIAL POST-DECISION REACTION...

¶6. (U) Even so, initial Dominican reaction to this decision focused overwhelmingly on the impact of the Haitian community on life in the Dominican Republic, with nationalists denouncing foreign interference and fear mongering.

Reputable periodicals did, and still do, refer to the plaintiffs as "Haitians" and the issue as one of "Haitian immigrants." (See, e.g., Listin Diario, "El pas est en la mira de los organismos internacionales" (Nov. 4, 2005))

¶7. (U) Both the PLD-controlled Foreign Ministry and the opposition PRD-controlled Senate responded negatively. The Foreign Minister called the decision "unacceptable" and the Senate passed a non-binding resolution rejecting the decision. In October 2005, in an unrelated case the Dominican Supreme Court upheld the 2004 Migration Law that explicitly adopted the widest possible interpretation of the Constitution's "in transit" exception to citizenship. This essentially ensured that children of migrants without residence permits would not be eligible for citizenship.

... GETS A COMMON SENSE MODIFICATION

¶8. (SBU) After the furor died down, the Dominican government found itself with a fairly limited IACHR decision calling for a series of relatively painless and concrete actions: the Court's sentence should be published nationally, a public act of recognition of responsibility should be made along with an apology to the plaintiffs, the equivalent of USD 22,000 in compensation should be paid to the aggrieved parties, and legislative and administrative measures should be implemented to ensure the non-discriminatory issuance of birth certificates.

¶9. (SBU) Recognizing that satisfying the majority of the

Court's specific demands would be a simpler task than answering its systemic critiques, the government responded. The first point has been accomplished, the second point is in train, and the third point should be accomplished soon, as well. The fourth point concerning issuance of birth certificates appears mired in difficulty and is a long-standing issue for larger Dominican community. Approximately 30 percent of Dominican citizens live without citizenship documents, largely because of difficulties and fees faced by their parents in proving nationality. The current process for issuing birth certificates results in de facto discrimination against Haitian migrants, but the deprived are generally the lowest of the socio-economic classes, regardless of nationality.

¶10. (SBU) The Dominican government's response appears not to set forth an approach to the problem of Haitian migration. Proposed draft implementing regulations for a 2004 migration law were first offered for public comment only until November 2005, then quickly disappeared into the Office of the Presidency without any notable discourse. Those draft regulations offered an approach to grant amnesty and legal status to illegal migrants present in the country for a period of 5 years or more.

¶11. (SBU) The price for Foreign Minister Morales Troncoso to commit publicly to carry out the Court's edict is essentially zero. The commitment is narrow and scarcely challenges the views of Dominican nationalists. The only truly difficult demand made by the Court is the fourth, which is a long-term concern of Dominican civil society in any case.

¶12. (SBU) The benefits of compliance were considerable: affirmation of treaty obligations, international good will, avoidance of bad press during the OAS General Assembly, and the success in engineering the election to the IACHR of Dominican Radhys Abreu de Polanco. In an era where a state's activities are increasingly judged by the international community, representation on international judicial bodies becomes increasingly important. This Embassy sees no reason to suggest that Abreu de Polanco will be anything less than a responsible international jurist -- indeed, her twenty years or more of service in the Foreign Ministry (most recently as Deputy Chief of the UN/OAS Human Rights Section), coupled

with her academic background evidences a dedication both to public service and to international human rights. But it is certain that a Dominican perspective on the IACHR will be welcomed by this and future administrations.

¶13. (U) Drafted by Michael Garuckis.

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